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THE

CASE

Of Several of

His Majesties Subjects in Ireland,

Commonly called

Protectees,

Most humbly Offer'd to the
Consideration of BOTH

Houses of Parliament.

I Have, for several Sessions late past, observed, That when the Parliament had taken into Consideration the Affairs of Ireland; there have been great Numbers of Petitions given in, by the Roman Catholics of that Kingdom, setting forth their respective Cases in Reference to the Matter

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then under Debate: And I have as often wonder'd to find no Application made on the behalf of those of that Kingdom commonly called *Protestees*, I have had the Opportunity to hear much of the Various Complaints of their several Classes there; and upon the whole it appear'd to me, that those called *Protestees*, as well, in Relation to their Behaviour during the War, as to the Extent and Method of their Suffering since then; have had much the severest Treatment of any concern'd in that Kingdom:

Having this Notion of the Measure, these poor People have met with; and being of Judgment, that it is the Duty of the meanest Member of a Society, as far as he may with due Deference towards the publick, and a convenient Regard to Himself, to remove, in Ease of his Neighbour, the Oppressors Hand; I had long since adventur'd thus to have laid their Case before this most Honourable Assembly, but that I was still in hopes some One more fully possess'd of the Matter, and more qualify'd for the Undertaking, would, before now, have taken this Office upon Him.

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These Considerations had still withheld me, but that now, that the Parliament Commissioners are upon the Point of making a general Report of all the *Irish* Forfeitures; it seems more than probable, that this may lead to an immediate and final Settlement of that Kingdom; and that once done, a Reprieve after Execution is over, may be as useful as any Remonstrance on the Behalf of these People.

Having thus set forth the Reason, or rather the Necessity that has induced me so far to forget my own Insufficiency, as to become an Advocate before so Great an Assembly, I crave leave, as an Apology for Addressing this Case to both Houses of Parliament, to observe, That the Justice of a Nation is often Arraign'd, as well for Wrongs done thro' want of Information, as for those done, or suffered thro' Passion, Interest or Prejudice; and that therefore as *Amicus Curie*, as a true Honourer of this Supream Court, and as One who wishes, as is ever Intended, all its Determinations founded in the strictest Justice; I thought it my Duty at this Juncture to lay this Case before both Houses.

I shall now proceed to a General, and plain Account of the Condition and Behaviour of these Persons during the War; and of the Prosecutions, and Seizures since then against them.

They consist partly of such as were meer Country Gentlemen; some, living upon their own Estates; some, upon their Farms, or other Ways of Industry; some of them, being Professors of the Law, were, during the Reign of King *James* in *England*, advanc'd to the Bench, and the rest of that Profession practic'd in the Courts there, and continued in their said Stations and Practice, during King *James* his Abode in *Ireland*: Some likewise, whilst King *James* was in *England*, were made Deputy-Lieutenants, Justices of the Peace, Collectors and other Officers of Revenue; and continued in the said Posts and Stations, or other the like Civil Employments whilst King *James* was in *Ireland*; some of them, being chosen by their Country, did, in hopes of being able, in some Measure, to quell, or mitigate the Heats, and Violences of others, as evidently appear'd by their Behaviour.

haviour when there, serve in the Parliament held there; and all, and every of them, excepting about four or five, are such as were in ~~not~~ Military Station or Service, or ever struck stroke in the Cause.

These persons thus Qualify'd, as to their Behaviour, and taking Encouragement from his Majesties several Gracious Declarations, and Proclamations, graciously tendering his Royal Clemency and Protection to such, as should be the more early in their Obedience, Resolv'd not to embark themselves in the Cause; and as a clear Evidence of these their Intentions, thy continu'd in their Respective Places of Residence, or as near it, as they could contrive to be, in any security with their Families, till such time as his Majesty's Troops approach'd so near as to be in a condition to preserve them. And so, in the course of this Majesty's March, they sued for his Royal Protection; and, having obtain'd the same, continued, during the two Sieges of Lymrick, and ever since, in the most dutiful Behaviour and Obedience towards his Majesty's Government; and such of them as liv'd within the Reach

Reach had Power of such Garrisons as did
out, and consequently could not be so early
in their Obedience, did in like manner, upon
the first approach of his Majesty's Troops
into that Country, sue for Protection; and
ever since liv'd Peaceably and Dutyfully un-
der his Majesty's Government.

This, upon the best Information I could
have, and as I am perswaded, will upon a
fair Enquiry appear, is a true general Ac-
count of the Behaviour of those called Protec-
tees in that Kingdom.

Their Condition standing thus, they found
themselves secure and happy under his Maje-
sty's Royal Protection, whilst he continu'd in
Person there; but upon his Majesty's Return
into England, the Scene was soon shifted, and
their Days of Tryal came on apace; for as
soon as the Forms of Judicature were re-
stor'd, a manner of proceeding altogether
New, Quick, and Comprehensive was set on
foot; Lists were brought in from every
Parish of all the Catholics, without any Di-
stinction who had resided there, during K.
James,

James, his stay in that Country. Indictments of High Treason of course, and by the lump, exhibited against them; and of course, as in many Cases may appear, found too.

This furious Inquisition having thus far gone on, without Rub, or Obstacle; the like Spirit of Diligence and Dispatch appear'd in what was to follow. Writs were issu'd out to the Sheriffs, and care taken, that one, and the same Return should be made thro'out the Kingdom; for altho' all these Persons, who had thus taken Sanctuary under the Wings of the Government, were then notoriously known to be, and daily seen, at their respective usual places of Residence, except a few who, to prevent any further Jealousy of their Behaviour, had obtain'd the Lords Justice's Passes to come for *England*; having first given two or three thousand Pounds sufficient Bail to be forth coming, when requir'd; yet *Non est inventus in Balliva*, &c. was the certain Return upon every Writ: And this even in Cases where the persons under Prosecution were then actually upon some Civil Process, or other Cause in custody of the Sheriff, who made the Return.

This was an expedient Thought necessary to dispatch the Process, and the sooner to bring these Persons to the Condition of being altogether at mercy; and consequently, it came soon to this Issue: For in a very few Months, after they had been thus taken into his Majesty's Royal Protection, they were all, in this manner, to the number of some thousands, attainted of High Treason; their Estates, whether *Leasehold*, or *Freehold*, seized; and all this at a time, when they had late abided the utmost Ravage of a licentious Soldiery; and had nothing, that stood above ground, left them.

In this distressed Condition, without House or Home, have they ever since struggled with their Wants; and such of them only happy, as are gone to their long Rest with their Fathers: Nor can they, or their Posterity ever intertain any hope of Relief, if their Expectations, upon this Juncture, from so Gracious a King, and so Wise, and so Just a Parliament, shall be intirely disappointed.

It may be a necessary mark of that Duty owing to the King here to observe, who are they

they, who promoted and set on foot these extraordinary Ways of Violence; for it is as evident, that the King did not give order for such proceedings, as it is, that they were not carry'd on for his Honour or Service. It will perhaps, upon a full Enquiry appear, there were several Setts and Forms of Men principally concern'd in the upholding these Prosecutions; Some animated by passion and prejudice of long standing, grounded on some struggle about Interest, and difference in matter of Religion: Some sick of their Condition at home, and desirous from an English broken Fortune, to become Wealthy Rulers, and Lords in *Ireland*; some who hop'd to have for asking, and others, who design'd to buy of them for next to nothing: Some push'd on by a Resentment of late Injuries; and all in fine united to pursue the Chace, and to divide the Spoil amongst 'em. And as a clear Evidence, that no part of this Reproach is levelled at his Majesty's Person: It is further to be observ'd, that some few of these thus attain'd Gentlemen, who had the Means left of laying their Case before his Majesty, were rescu'd from the common Plunder, and admitted

to reverse their Outlawrys: And, without all peradventure, his Royal Clemency had extended to as many more as were equally Innocent, if He had been in like manner apprized of their Case and Condition; and how far they are answerable to the King, and to this great Tribunal, whose province it was to lay the Condition of his People in a full light before Him; and who, on the contrary, have employed their Interest and Authority to block up all the Avenues to his Grace and Favour; and have made use of his Name, and the Trust sometimes repos'd in them to carry on their Oppression and Avarice, is not for me to Judge.

It now occurs to me, that I have often heard some well Meaning, and Worthy Gentlemen Object, why such as were only in the civil Magistracy, &c: which, considering the force that was upon them, could not be avoided; and consequently could be no Crime, why such, when they found themselves indicted, did not appear and take their Tryal? To which may be Answer'd:

In the First place, that some of them (as be-

before hinted) were come for *England*; and being under very high Bail, to appear when called for, and having a *Pass* from the Government, upon such Bail given, to go into *England*; were in no Apprehension of being charg'd with such Capital Crime without some previous and publick Notice given; and these were outlaw'd some Years before they had heard of any Prosecution against them, and an Act of Parliament pass'd there in Confirmation of all Outlawrys, whereby his Majesty was depriv'd of the Power of giving Order for Reversal of such Outlawrys.

Secondly, it was so contriv'd, that very few of those, who continued in *Ireland*, could (probably speaking) have any Notice of their being prosecuted, till they were actually outlaw'd; for that the Indictment and Process was, for the most part, set on foot; and carried on, in some Country remote from the place of Residence of the Person prosecuted; and they being then, by Order of the Government, under pain of Imprisonment, and other Penalties requir'd not to stir above Five Miles

Miles from Home, they were depriv'd of the Opportunity of discovering such Proceedings, till 'twas too late to prevent them.

Lastly, as to such of them, as had Notice of an Indictment of High Treason exhibited against them; it is to be consider'd, how little Reason they had so far to rely upon their Innocence or early Return to their Duty, as to put their Lives in Predicament, when they found they were to be tryed by Persons newly exasperated against them; when they daily saw, contrary to all Law and Practice, Indictments of High Treason exhibited and found against persons, who had long layn in their peaceable Graves, and were past the making any Defence in this World; when every day furnish'd Instances of the like Bills for High Treason committed in *Ireland*, during the War, found against meer Children, against persons who had not been there in some Time before, or since the War; and even against some who had never been in that Kingdom; besides Indictments, beyond Number, found for Treason committed upon the 13th of February, 1688. being the very Day

Day of their Majesty's Accession to the Crown; and of which, it was altogether impossible to have had Notice in *Ireland*, in some Days after these Treasons are laid. These, and a great Variety of the like Effects of the Resolution then, by some, taken to root out that unfortunate Remnant were sufficient, perhaps, to deter a wiser, and more hardy People from putting their Lives in Hazard.

It may here appear proper enough, to say somewhat of such Acts and Compliances as, in former Civil Wars, have been deem'd not Treasonable; but I would not seem too apt to plunge out of my Depth, and therefore must not undertake a Topic I know so little of: I am withal not to forget, that I have taken the Liberty to address this Treatise to an Assembly consisting of the Greatest and Wisest Men; and that, if I can say enough to put them on Discussion of the matter, it will be much more prevalent than any thing I can urge to support it: I shall therefore, as to this, think it sufficient to observe, That in all our Civil Wars, the Wisdom of our Great Council has been such, as not to have inham'd these small
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and (if I may so say) natural Acts of Compliance into Treason. There has ever been much allow'd to humane Nature, and the Principle of Self-preservation; when Men, and their Families are fallen under a Force not to be resisted. The Civil Magistracy is an Institution meerly for the Welfare and Support of Society, to be a Barrier between the Weak and the Strong; and at all Times, as much as may be, to preserve Peace and Order; and, in the Times of Trouble and Tumult, has been found as useful towards these Ends, or rather more than in the Times of Peace, and rightful Administration; and therefore in all Ages the Magistrate, and civil Officer of what kind soever have been indulg'd: And thus it has fared with some in *Ireland*, even at the time now Treated of; for there were a great many Protestant Inhabitants, as well as Catholics, who were forc'd to subsist Troops, and pay Taxes and Subsidys; and likewise several Protestants in Posts and Stations, from the highest to the lowest, as Privy - Counsellors, Judges, Commissioners, and other inferior Officers of Revenue, and some, even Officers in the Army; and yet upon a Charitable Supposition, that they

they acted in those Posts and Stations in their own Preservation; and they having as soon as they could resorted to his Majesty for Protection, they were receiv'd into Grace and Favour, and no Prosecution set up against them; and it being a notorious Truth, that the Catholick *Protectees* submitted as early as their Protestant Neighbours, that they were, whilst the other party prevail'd, under a greater Necessity of Compliance; for that any Hesitation or Lukewarmness, was deem'd altogether unpardonable in them, and that they have ever since behav'd themselves as dutifully; it seems very unequitable, that the Measure they have met with should be so very different.

I can not omit here to specify their Majesty's Royal Declaration of the 22d of February, 1688, whereby a full and free Enjoyment of their respective Estates, &c. is graciously offer'd to all such, as, upon Notice of His Royal Pleasure therein, should lay down their Arms, and retire to their respective places of abode. It must be granted, That if these *Protectees* had been actually in Arms, and had, on Notice of this Proclamation, surrender'd their

Commissions, and return'd to their usual and
 respective Ways of Living, and places of A-
 bode; that they had thereby, whatever pay-
 ments of Taxes or other unavoidable Acts of
 Compliance they had been guilty of, been
 within the express Letter of this Declaration;
 and it seems to me as clear, that such as
 never took up Arms, but continued in their
 before usual Stations, and at their usual pla-
 ces of Abode, are comprehended within the
 Scope and meaning of it: For otherwise, their
 having not been once in Arms against the
 Government, is that, which excludes them
 His Majesties tender'd Grace and Clemency;
 which must certainly appear an harsh and ab-
 surd Construction: And it is here to be ob-
 serv'd, that this Declaration doth not require
 their thus quitting their Arms, and retireing
 within any prefix'd Time, but upon Notice;
 and whoever considers the Strictness and Em-
 bargoes then of each side used, to shut out
 all Intelligence must admit it very probable,
 that few or none of those, then residing in
 Ireland, had ever heard of this Declaration, till
 the Time of the near Approach of His Ma-
 jesties Troops; and then it was, that these Gen-
 tlemen

lemen humbly sued to be receiv'd into Protection, and have liv'd sufficiently retir'd ever since.

I wish these hardships here pointed at, and the many more not enumerated, were justly to be look'd upon, as the meer effects of the first Heat and Repentment of Men upon the Close of the War: For there are many persons in Authority there good natur'd and forgiving enough, to have been weary, before now, of adding to the number of the Afflicted; but it will, perhaps, appear these Hardships (as to some especially) are grounded upon the more lasting Foundation of Lands and Tenements; if it be consider'd, that so lately as the very last Vacation, or near thereabouts, a new Prosecution was set up all over the Kingdom; and in one County, above one hundred Persons Indicted of High Treason, as committed during the late Troubles, and some who were Indicted about three Years since, and who resolv'd to stand Tryal have been, every Term since then, continu'd upon Bail; and tho' they have each Term press'd for a Tryal, yet hitherto neither Discharg'd, nor Try'd, but con-

tinu'd on, under the innumerable Inconveniences, and Scandal of so high an Accusation.

I shall here, as in other places, shun all Aggravation, and only say, that this surprising Scrutiny, after 8 or 9 Years perfect Peace and dutiful Behaviour, does in Consequence, and in point of Interest, affect a great many besides the Persons themselves thus charg'd: For others finding them, for such a number of Years unmolested, were under no apprehension of their being still in hazard of such publick Charge, and frankly enter'd into Commerce, Marriages, and Dealings of all kinds with them; and have now only a parcel of wretched Criminals to trust to.

It is to be presum'd, that these are Persons, who, in the begining, had no visible Fortunes, and were therefore overlook'd in the Herd: But if since they have been too Industrious, or, by a fountune over Favorable, any thing is devolv'd upon them, they may thank themselves, or their too kind Stars for what has follow'd.

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It is here to be fear'd, that some, who Pre-
 side of the other side the Channel, remain
 yet too much tainted with the Examples they
 have seen in their Youth of Foreign Confisca-
 tions; that, by being not enough acquainted
 with our more happy Constitution, they are
 apt some times to carry things to too high a
 Pitch, and that now and then they forget,
 they are in the Service of a truly Great Ma-
 ster, who has too many Royal Virtues
 to want Sentiments of Pity for His Peo-
 ple; and who is too gracious a Prince to de-
 light in Oppression, or to suffer it, when
 he knows it, in his Substitutes.

I may now truly say for my Self, that I
 have spun out this Discourse to a Bulk much
 beyond what I propos'd, occasion'd chiefly
 thro' a Want of Method, and a Disuse of
 Undertakings of the Kind; I must therefore
 hasten to a Close; and if, by any thing I
 have herein offer'd, I become Accessary to their
 being so far taken into Consideration, as that
 some regard may, at the last, be had to their
 quiet Behaviour, during the War, and early
 Submission afterwards; I shall think my Time
 happily employ'd. There

There are Sufferers of other Kinds there; whose Case and Circumstances, if fully understood, might, perhaps, before so Just, so Equal, and so Fatherly a Tribunal, render them deserving of some Marks of a favourable Distinction from the more obstinate, and long persisting: But their Case being beside my purpose, I shall only slightly take Notice, That there are of these some Young Women of Quality, and meer Orphans, who, upon solemn Marriage Settlements long before this Revolution, had suitable Fortunes secur'd on the Father's Estate; but it being done by the usual *Proviso*, that the Father should have Power by his last Will, &c. to charge the Estate with so much for the Daughters of that Marriage, and the Father being outlaw'd and consequently the last will set aside, tho' of no use or necessity here, than to appportion what each Daughter was to have had of such a Sum in the whole ascertain'd by the Settlement; yet by the Father's falling under such a Legal Disability, tho' outlaw'd after Death, or in *England*, at a time when it was impossible for him so much as to have heard of any Prosecution; these Young Women are expos'd to the

the lowest Wants, and to, almost, a Necessary of being forc'd upon the vilest Courses.

There are of these others, whose Fathers happen'd to be of King *James* his Menial Servants, and consequently the more oblig'd not to abandon their Master in his adverse Fortune; and altho' the Paternal Estate is in some, or most of these Cases secur'd to the Mother, and Children after the Fathers Death; yet, in the mean time, they are both left destitute of any means of Subsistence.

There are some, who never bore Arms in *Ireland*, but retir'd soon into *France*; and pass'd their Time in an absolute Privacy there, without any Dependence upon, or Relation to the late King *James*; and yet, by Outlawrys, and Attainders, incurr'd in their absence, they, and their numerous Families, without any sort of Provision, are for ever excluded.

Lastly, there are of these some Eminent Persons, who now, and heretofore, have deserv'd well of the Crown of *England*, who being placed in Foreign Governments by K. *Charles* the Second;

Second, continued, notwithstanding the late Revolution in the faithful Discharge of their Duty, and effectually imploy'd their Fortune and Credit in support of the English Rights and Sovereignty abroad; and being now return'd home, find themselves incumber'd with empty Titles, and what else they were to have deriv'd from their Ancestors, swallow'd up in the common gulf of Forfeitures, and no sort of Support, or Provision left for them.

It is here again to his Glory to be noted, that such of these, as had Friends in Credit enough, to lay their Case before his Majesty, had the effects of his usual Bounty and Clemency; and, it is not to be doubted, but that, upon a fair and equal Representation, his Clemency would extend to all the rest, and outgo all his Royal Predecessors: And not only in their Reigns, but during the Oppressions of the late Civill Wars; the Widows, and Orphans of the then reputed Offenders were so provided for, as not to fall into too low and abject a Condition; and even such of the Delinquents themselves (as then term'd) who stay'd at home, were so far consider'd as that
they,

they, and their Posterity were, upon a general Rule set up, reprized in one Province, in some proportion to what they had lost in another.

I cannot fear to be so misunderstood, as from this Relation of what was then done to intend any reflection upon the best of Governments. I mention this Christian Moderation practic'd in the worst of Times, from thence only to insinuate how much more may be hop'd for from so excellent a Constitution; how conformable it may be found to the practice of the like good English Kings, and Parliaments heretofore to set up Rules, and Qualifications by which to censure Men and Nations, by which so far to distinguish the Time, and the Behaviour of Men, as to propound some Measure of Punishment upon which such, as by their being unactive in the War, or early Repentance and Return to their Duty, or other moving Circumstances may have qualify'd themselves for some Degree of Mercy, may atone to the publick for their Offences.

Having thus far taken the Liberty to point at some moderate Expedients, I hope I may

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without Offence humbly offer to Consideration, that those who were then in that Kingdom, of what Judgment or Inclination soever, were upon the Principle of Self-preservation, under an apparent Necessity of submitting to the then prevailing Power; that the then late King was in Person there, at the Head of such Troops as could enforce their Obedience; that how clearly soever the great Turn of those Times was grounded upon right Reason and Religion, yet there were numbers of wise, good and learned Men even in England, where, by the King's having withdrawn himself, the Matter seem'd less doubtful, who remain'd for some time unresolv'd as to their Duty upon that Conjunction. They are often the more lasting, that are the more slowly Receiv'd Impressions; and they who took time and pains to convince themselves of their Obligation to submit upon this great Occasion, will, perhaps, prove as faithful as they who more readily apprehended their Duty, and assented to what was done. I shall not, tho' I mean all possible Deference towards the present Establishment, presume to dwell upon this Argument, for fear of being thought (beyond my

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Intention) to make other use of it than in Mitigation only; and if upon what is here humbly offer'd, and what more may occur to so Great and Wise an Assembly, in extenuation of their Faults, they shall nevertheless be adjudg'd unworthy any favourable Compromise; I think, I may so far denounce against them, (as that, in Addition to their own) the Sins of their Fathers are upon them, and that their Kingdom is not of this World.

F I N I S.
